

**Notice of Allowability**

Application No.

10/625,418

Examiner

Annette R. Reimers

Applicant(s)

FOLEY ET AL.

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**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--**

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to correspondence filed on 08/30/06.
2. ☒ The allowed claim(s) is/are 1-9, 16, 17 and 19-21 and 30-35.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☐ All    b) ☐ Some\*    c) ☐ None    of the:
    1. ☐ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS ( as "replacement sheets") must be submitted.
  - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review ( PTO-948) attached
    - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
  - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO/SB/08),  
Paper No./Mail Date \_\_\_\_\_
4. ☐ Examiner's Comment Regarding Requirement for Deposit  
of Biological Material
5. ☐ Notice of Informal Patent Application
6. ☐ Interview Summary (PTO-413),  
Paper No./Mail Date \_\_\_\_\_
7. ☐ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other \_\_\_\_\_

  
**EDUARDO C. ROBERT**  
**SUPERVISORY PATENT EXAMINER**

### **REASONS FOR ALLOWANCE**

The following is an examiner's statement of reasons for allowance:

The claims in the instant application have not been rejected using prior art because no references, or reasonable combination thereof, could be found which disclose, or suggest a method for preparing a spinal disc space, comprising: inserting a body portion of a distractor into the spinal disc space with an upper surface of the body portion adjacent an endplate of an upper vertebra and a lower surface of the body portion adjacent an endplate of a lower vertebra, wherein the body portion includes at least one flange extending from a distal end of the body portion towards a proximal end of the body portion; advancing a cutting instrument over the body portion between the at least one flange and the body portion to remove material between at least one of the upper and lower surfaces of the body portion and the adjacent vertebra; and depositing cut material into a cavity formed in the body portion, the cavity opening toward at least one of the upper and lower surfaces, as set forth in claim 1.

The claims in the instant application have not been rejected using prior art because no references, or reasonable combination thereof, could be found which disclose, or suggest a method for preparing a spinal disc space, comprising: inserting a body portion of a distractor into the spinal disc space; advancing a cutting instrument over the body portion into the spinal disc space; and limiting advancement of the cutting instrument into the spinal disc space by contacting the cutting instrument with a distal end wall of the body portion, wherein advancing the cutting instrument includes advancing the cutting instrument between a first flange and a second flange of the

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distractor, each of the first and second flanges extending from a distal end of the body portion toward a proximal end of the body portion, each of the first and second flanges forming a slot along the body portion for receiving the cutting instrument, as set forth in claim 16.

The claims in the instant application have not been rejected using prior art because no references, or reasonable combination thereof, could be found which disclose, or suggest a method for preparing a spinal disc space, comprising: inserting a body portion of a distractor into the spinal disc space; advancing a cutting instrument over the body portion into the spinal disc space; and limiting advancement of the cutting instrument into the spinal disc space by contacting the cutting instrument with a distal end wall of the body portion, wherein advancing the cutting instrument includes advancing the cutting instrument between at least one flange of the distractor and the body portion of the distractor, the at least one flange extending from a distal end of the body portion towards a proximal end of the body portion and forming a slot along the body portion for receiving the cutting instrument, as set forth in claim 30.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Annette R. Reimers whose telephone number is (571) 272-7135. The examiner can normally be reached on Monday-Friday.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on (571) 272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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EDUARDO C. ROBERT  
SUPERVISORY PATENT EXAMINER